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HOUSE BILL 697

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Rob Burpo

AN ACT

**RELATING TO GOVERNMENTAL IMMUNITY; LIMITING LIABILITY FOR
DAMAGES CAUSED BY THE FAILURE OF CERTAIN EQUIPMENT TO PRODUCE
A CORRECT DATE AFTER DECEMBER 31, 1999.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 41-4-19 NMSA 1978 (being Laws 1976,
Chapter 58, Section 17, as amended) is amended to read:**

"41-4-19. MAXIMUM LIABILITY. --

**A. In any action for damages against a
governmental entity or a public employee while acting within
the scope of his duties as provided in the Tort Claims Act,
the liability shall not exceed:**

**(1) the sum of one hundred thousand dollars
(\$100,000) for damage to or destruction of property arising
out of a single occurrence; and**

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1 (2) the sum of three hundred thousand dollars
2 (\$300,000) for all past and future medical and medically
3 related expenses arising out of a single occurrence; and

4 (3) the sum of four hundred thousand dollars
5 (\$400,000) to any person for any number of claims arising out
6 of a single occurrence for all damages other than property
7 damage and medical and medically related expenses as permitted
8 under the Tort Claims Act; or

9 (4) the sum of seven hundred fifty thousand
10 dollars (\$750,000) for all claims other than medical or
11 medically related expenses arising out of a single occurrence.

12 B. In any action for damages against a
13 governmental entity or a public employee while acting within
14 the scope of his duties as provided in the Tort Claims Act,
15 the liability for damages that are the direct or indirect
16 result of the failure or malfunction of computer hardware,
17 computer software, microchip-controlled firmware, or other
18 equipment affected by the failure, or to correctly produce,
19 calculate or generate a date after December 31, 1999, shall
20 not include any award for consequential damages and shall not
21 exceed:

22 (1) the sum of five thousand dollars (\$5,000)
23 for damage to or destruction of property arising out of a
24 single occurrence; and

25 (2) the sum of fifteen thousand dollars

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1 (\$15,000) for all past and future medical and medically
2 related expenses arising out of a single occurrence; and

3 (3) the sum of twenty thousand dollars
4 (\$20,000) to any person for all claims arising out of a single
5 occurrence for all damages other than property damage and
6 medical and medically related expenses as permitted under the
7 Tort Claims Act; or

8 (4) the sum of thirty-seven thousand five
9 hundred dollars (\$37,500) for all claims other than medical or
10 medically related expenses arising out of a single occurrence.

11 ~~[B.]~~ C. No judgment against a governmental entity
12 or public employee for any tort for which immunity has been
13 waived under the Tort Claims Act shall include an award for
14 exemplary or punitive damages or for interest prior to
15 judgment.

16 D. before a claimant may commence an action
17 against a person for harm caused by a computer date failure
18 pursuant to Subsection B of this section, the claimant must
19 notify the person of the failure, describe the failure and
20 provide the person a reasonable opportunity to cure the
21 failure or to make restitution. The person must have at least
22 three months to cure the failure or to make restitution. If a
23 claimant commences an action against a defendant for harm
24 caused by a computer date failure without providing the
25 defendant an opportunity to cure the failure or to make

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1 restitution, the court shall dismiss the action with
2 prejudice. "

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1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
3
4
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6 February 23, 1999
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8 Mr. Speaker:
9

10 Your GOVERNMENT AND URBAN AFFAIRS COMMITTEE, to
11 whom has been referred
12

13 HOUSE BILL 697
14

15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the
17 JUDICIARY COMMITTEE.

18 Respectfully submitted,
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22 _____
23 James G. Taylor, Chairman
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HGUAC/HB 697

Page 6

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

Excused: Taylor, J. G.

Absent: None

J: \99BillSWP\h0697

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1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999

3
4 February 23, 1999

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7 Mr. Speaker:

8
9 Your GOVERNMENT AND URBAN AFFAIRS COMMITTEE, to
10 whom has been referred

11 HOUSE BILL 697

12
13 has had it under consideration and reports same with
14 recommendation that it DO PASS, and thence referred to the
15 JUDICIARY COMMITTEE.

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17 Respectfully submitted,

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22 James G. Taylor, Chairman
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HGUAC/HB 697

Page 8

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

Excused: Taylor, J. G.

Absent: None

J: \99BillSWP\h0697

underscored material = new
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1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999

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4 February 23, 1999

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7 Mr. Speaker:

8
9 Your GOVERNMENT AND URBAN AFFAIRS COMMITTEE, to
10 whom has been referred

11 HOUSE BILL 697

12
13 has had it under consideration and reports same with
14 recommendation that it DO PASS, and thence referred to the
15 JUDICIARY COMMITTEE.

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17 Respectfully submitted,

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21 _____
22 James G. Taylor, Chairman
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HGUAC/HB 697

Page 10

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

Excused: Taylor, J. G.

Absent: None

J: \99BillSWP\h0697

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1 **FORTY- FOURTH LEGISLATURE**
2 **FIRST SESSION, 1999**

3
4 **March 8, 1999**

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7 **Mr. Speaker:**

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9 **Your JUDICIARY COMMITTEE, to whom has been referred**

10 **HOUSE BILL 697**

11
12 **has had it under consideration and reports same with**
13 **recommmendation that it DO NOT PASS, but that**

14
15 **HOUSE JUDICIARY COMMITTEE SUBSTITUTE**
16 **FOR HOUSE BILL 697**

17 **DO PASS.**

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19 **Respectfully submitted,**

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23 _____
24 **R. David Pederson, Chairman**

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HJC/CSHB 697

Page 12

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Luna, Sanchez

Absent: None

J:\99BillsWP\h0697

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 697

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

AN ACT

RELATING TO GOVERNMENTAL IMMUNITY; PROVIDING GOVERNMENTAL
IMMUNITY FROM CIVIL LIABILITY FOR CLAIMS ARISING FROM FAILURE
OF CERTAIN EQUIPMENT TO ACCURATELY PROCESS DATES OR TIMES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 41-4-4 NMSA 1978 (being Laws 1976,
Chapter 58, Section 4, as amended) is amended to read:

"41-4-4. GRANTING IMMUNITY FROM TORT LIABILITY--
AUTHORIZING EXCEPTIONS. --

A. A governmental entity and any public employee
while acting within the scope of duty are granted immunity
from liability for any tort except as waived by Sections
41-4-5 through 41-4-12 NMSA 1978. Waiver of this immunity
shall be limited to and governed by the provisions of Sections
41-4-13 through 41-4-25 NMSA 1978, but the waiver of immunity
provided in those sections does not waive immunity granted
pursuant to the Governmental Immunity Act.

B. Unless an insurance carrier provides a defense,

1 a governmental entity shall provide a defense, including costs
2 and attorneys' fees, for any public employee when liability is
3 sought for:

4 (1) any tort alleged to have been committed
5 by the public employee while acting within the scope of his
6 duty; or

7 (2) any violation of property rights or any
8 rights, privileges or immunities secured by the constitution
9 and laws of the United States or the constitution and laws of
10 New Mexico when alleged to have been committed by the public
11 employee while acting within the scope of his duty.

12 C. A governmental entity shall pay any award for
13 punitive or exemplary damages awarded against a public
14 employee under the substantive law of a jurisdiction other
15 than New Mexico, including but not limited to other states,
16 territories and possessions and the United States of America,
17 if the public employee was acting within the scope of his
18 duty.

19 D. A governmental entity shall pay any settlement
20 or any final judgment entered against a public employee for:

21 (1) any tort that was committed by the public
22 employee while acting within the scope of his duty; or

23 (2) a violation of property rights or any
24 rights, privileges or immunities secured by the constitution
25 and laws of the United States or the constitution and laws of
New Mexico that occurred while the public employee was acting
within the scope of his duty.

E. A governmental entity shall have the right to

1 recover from a public employee the amount expended by the
 2 public entity to provide a defense and pay a settlement agreed
 3 to by the public employee or to pay a final judgment if it is
 4 shown that, while acting within the scope of his duty, the
 5 public employee acted fraudulently or with actual intentional
 6 malice causing the bodily injury, wrongful death or property
 damage resulting in the settlement or final judgment.

7 F. Nothing in Subsections B, C and D of this
 8 section shall be construed as a waiver of the immunity from
 9 liability granted by Subsection A of this section or as a
 10 waiver of the state's immunity from suit in federal court
 11 under the eleventh amendment to the United States
 constitution.

12 G. The duty to defend as provided in Subsection B
 13 of this section shall continue after employment with the
 14 governmental entity has been terminated if the occurrence for
 15 which damages are sought happened while the public employee
 16 was acting within the scope of duty while the public employee
 17 was in the employ of the governmental entity.

18 H. The duty to pay any settlement or any final
 19 judgment entered against a public employee as provided in this
 20 section shall continue after employment with the governmental
 21 entity has terminated if the occurrence for which liability
 22 has been imposed happened while the public employee was acting
 23 within the scope of his duty while in the employ of the
 governmental entity.

24 I. A jointly operated public school, community
 25 center or athletic facility that is used or maintained

1 pursuant to a joint powers agreement shall be deemed to be
2 used or maintained by a single governmental entity for the
3 purposes of and subject to the maximum liability provisions of
4 Section 41-4-19 NMSA 1978.

5 J. For purposes of this section, a "jointly
6 operated public school, community center or athletic facility"
7 includes a school, school yard, school ground, school
8 building, gymnasium, athletic field, building, community
9 center or sports complex that is owned or leased by a
10 governmental entity and operated or used jointly or in
11 conjunction with another governmental entity for operations,
12 events or programs that include sports or athletic events or
13 activities, child-care or youth programs, after-school or
before-school activities or summer or vacation programs at the
facility. "

14 Section 2. [NEW MATERIAL] SHORT TITLE. --Sections 2
15 through 4 of this act may be cited as the "Governmental
16 Immunity Act".

17 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
18 Governmental Immunity Act:

19 A. "employment" includes services provided by an
20 immune contractor;

21 B. "governmental entity" means the state or a
22 local public body;

23 C. "immune contractor" means a person that:

24 (1) is an independent contractor; and

25 (2) contracts with a governmental entity to

provide:

1 (a) care for children in the custody of
2 the human services department, corrections department or
3 department of health, as a licensed foster parent, excluding
4 foster parents certified by a licensed child placement agency;
5 or

6 (b) services to the children, youth and
7 families department or the corrections department as a
8 licensed medical, psychological or dental arts practitioner;

9 (3) is a member of:

10 (a) a state or local selection panel
11 established pursuant to the Juvenile Community Corrections
12 Act;

13 (b) a state or local selection panel
14 established pursuant to the Adult Community Corrections Act;

15 (c) the board of directors of the New
16 Mexico comprehensive health insurance pool;

17 (d) a medical review board, a committee
18 or panel established by the educational retirement board or
19 the retirement board of the public employees retirement
20 association;

21 (e) the board of directors of the New
22 Mexico educational assistance foundation; or

23 (f) the board of directors of the New
24 Mexico student loan corporation; or

25 (4) is a volunteer, employee or board member
of a court-created special advocate program;

D. "local public body" means a political
subdivision of the state and its agencies, instrumentalities

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1 and institutions and a water and natural gas association
2 organized pursuant to Chapter 3, Article 28 NMSA 1978;

3 E. "public employee" means a natural person that
4 is an officer or employee of a governmental entity; and

5 F. "state" means the state of New Mexico or any of
6 its branches, agencies, departments, boards, instrumentalities
7 or institutions.

8 Section 4. [NEW MATERIAL] GOVERNMENTAL CIVIL IMMUNITY
9 ESTABLISHED. -- A governmental entity, a public employee and an
10 immune contractor are not liable for damages arising out of a
11 claim based upon tort, contract or other civil law claim and
12 caused directly or indirectly by the failure or malfunction of
13 computer hardware, computer software, microchip controlled
14 firmware or other equipment affected by the failure to
15 accurately or properly process dates or times if the failure
16 or malfunction:

17 A. occurred before December 31, 2005;

18 B. occurred within the scope of employment of the
19 public employee or within the scope of the contract or the
20 volunteer service program of the immune contractor; and

21 C. was unforeseeable or was foreseeable but the
22 plan or design, or both, for identifying and preventing it was
23 prepared and implemented in good faith and with the exercise
24 of ordinary care.

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FORTY- FOURTH LEGI SLATURE
FIRST SESSI ON, 1999

March 17, 1999

Mr. Presi dent:

Your JUDI CIARY COMMI TTEE, to whom has been referred

HOUSE JUDI CIARY COMMI TTEE SUBSTI TUTE FOR
HOUSE BILL 697

has had it under consideration and reports same with
recommmendation that it DO PASS.

Respectfully submi tted,

Michael S. Sanchez, Chai rman

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HJC/HB 697

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2 Adopted _____ Not

3 Adopted _____

4 (Chief Clerk)

(Chief Clerk)

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Date _____

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10 The roll call vote was 4 For 1 Against

11 Yes: 4

12 No: McSorley

13 Excused: Aragon, Stockard, Tsosie

14 Absent: None

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